19

(2)

08-657

Supreme Court, U.S.
FILED
FEB 7 - 2009
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

Lawrence D. Marvin,

Petioner

v.

Fraternal Order of Eagles Aerie #200,

Respondents

On petition for Rehearing for Writ of Certiorari to the Nebraska Supreme Court

# PETITION FOR WRIT OF CERTIORARI

(MR.) LAWRENCE D. MARVIN
Pro se
100F Building Suite 201
635 North Main Street
Fremont, Nebraska 68025
1-402-372-8978
American citizen pro se

## QUESTIONS PRESENTED

1. Do you the Court understand or comprehend that the Respondents are still overtly encroaching on this Petitioner's land and that in so doing, they are still repeatedly creating hazards to Life and Safety of Lawrence D. Marvin-owner of Fee-Simple real estate, also the hazards are a threat to Marvin's family, guests and the public invited onto the commercial property; and the most shameful, ridiculous and obnoxious fact is that these present hazards are also a threat to the Life and Safety of the Respondents, their members, and their public guests all of whom may need to use this designated permanent fire exit egress walkway back to the public alley, in an emergency.?

2. Do you the Court comprehend that Petitioner only removed the most flagrant obstruction, which was a thirty six inch humongously heavy item, which was intentionally place by hired agents, right in the middle of the designated forty eight inch wide fire exit egress permanent walkway route, that leads to the public alley on the west end of both properties, and such an obstruction violated our laws, rules, and regulations of Life Safety Codes under which Lawrence D. Marvin had a non-delegatable duty and responsibility to remove immediatly and that the Respondents also had the same duty and responsibility under their Liquor License and also under their buildings

2. continued)
occupancy limits permit from the government?

3. Why didn't the Court comprehend that the Respondent arrogantly, with impunity, violated the Court Order Remedy #23784, which should give weight to reduce damages to 50% or less; as joint Tortfeasor and/or stare decisis?

4. Why does this Court System look the other way on trespass of posted property and written request to leave, without reducing damages and waste?

5. Why doesn't the Supreme Court comprehend that the only real damage was to the warranty?

6. Why doesn't the Court comprehend that our Constitution(s) reserve to the citizens all rights not given to the government. So, if Court Order #23784 is worthless; if Marvin's posted property signage is worthless; the registered letter from Marvin to Respondent to get off or the condenser is abandoned and forfeited, is worthless; and the visits by the local and State Fire Officials is worthless; and the dealine of 48 hours has passed is worthless; then why shouldn't damages be reduced under self-help as self defense and minmizing damages by preventing tragidies of death and injuries of dozens of people, family, guests, and public, which could run into the millions of

dollars or does the Court ever recall sending property owners to prison and the lawsuits bankrupt said land owners?

7. Why shouldn't this Petitioner get some of the damages and interest returned from the supersedeous bond which was trned over to the Respndents? Or is this petitioner to finance wrongful behaviors of the Respondents, who can act abve the law with 100% impunity?

8. What is a joint tortfeasor, if the Respondents can unilaterally create fiat leases without payment of consideration and acceptance by this petitioner?

9. Why should this repeated wrongful behavior presist, like we witnessed resistence to school integration and school busing, until the Courts decided to supervise the enforcement of their court order, so when are you, the Court, going to supervise the enforcement of Court Order #23784 which created as a remedy for Lawrence D. Marvin; this petitioner?

10. What is the value of stare decises of conversion-Justification 342F Supp. 1048, 1062 if my United States Supreme Court can't reduce my damages; but President Obama can have a second chance from the Court at getting his Oath of Office taken according to law?

## CERTIFICATE

I Lawrence D. Marvin as Petitioner do hereby swear that this is my appeal, and that it if made is good faith and not as a delay tactic.

This petition complies to the Rules as I have read them and is 3000 words or less.

LAWRENCE D. MARVIN, pro se

## PARTIES TO THE PROCEEDINGS

Lawrence D. Marvin
Pro se petitioner
IOOF Building
635 North Main Street
Fremont, Nebraska 68025

Fraternal Order of Eagles Aerie #200
represented by
S. Nicholas Boggy
Sidner, Svoboda, Schilke, Thomsen
Holtorf, Boggy, and Nick
340 East Military Avenue
Fremont, Nebraska 68025

## RELATED PROCEEDINGS

Court Order #23784 REMEDY for Marvin, ordering FOE Aerie #200 to get off and stay off Marvin's land. (see Court Exhibit #3)

TABLE OF CONTENTS

QUESTIONS PRESENTED.....i

CERTIFICATE.....iv

PARTIES TO THE PROCEEDINGS.....v

RELATED PROCEEDINGS.....vi

TABLE OF CONTENTS.....vii

TABLE OF AUTHORITIES.....1

Constitutional Provisions

Statutory Provisions

Evidentiary Provisions

Other Materials

Unconstitutional to require citizens to condone and/or finance criminal behavior

Clean Hands Doctrine-Old English Court of Equity

U.C.C. to enforce Civil Rights

PETITION FOR REHEARING FOR WRIT OF CERTIORARI.....2

OPINIONS BELOW.....3

JURISDICTION.....4

CONSTITUTIONAL AND STATUTORY.....5

Provisions Involved

STATEMENT OF THE CASE.....6

Proceedings Below

Statement of Relevant Facts

REASONS FOR GRANTING THE PETITION FOR REVIEW.....10

CONCLUSION.....11

INDEX TO APPENDICES.....12

A) Dodge County Court

B) Dodge County Court history of case and its final order

C) Nebraska Court of Appeals

D) Nebraska Supreme Court and Nebraska Court of Appeals

E) Dodge County Court

F) Dodge County Court

G) Supreme Court of the United States

TABLE OF AUTHORITIES

NONE - Just general knowledge of three branches of government.

The Declaration of Independence

The Constitution of the United States of America
84th Congress 2nd Session House Document #459

Government Printing Office
Washington, 1956

Major Joint Tortfeaser

Nebraska Revised Statutes
81-501 through 81-541 Assembly Building Permit

28-520 through 28-521 Trespass
28-300 through 28-311.01 Terrorism
Federal CFR 1910.36.

Abuse of Process

Abuse of Discretion

The Commercial Clause of U.S. Constitution with Protection under the law. Civil Rights Act 1964

## PETITION FOR REHEARING FOR WRIT OF CERTIORARI

Petitioner Lawrence D. Marvin respectfully appeals and prays that a Rehearing for a Writ of Certiorari be issued to put a stop to the repeated overt wrongful behavior of Respondents of obstructing Marvin's fire exit egress, and on modern day Terrorism, Hate Crimes, and repeated First Degree Criminal Trespass by the Respondent, and the Court's errors in no EXTENUATING CIRCUMSTANCES, or mitigating circumstances to reduce the damages set by the Dodge County Court of Nebraska, for Respondent being a Joint Tortfeasor by overtly initiating their wrongful trespass, and refusing to leave.

## OPINIONS BELOW

1. Dodge County Court reproduced appeal as Case Number CI05-1045. Judgement March 9, 2007

2. Dodge County District Court Case Number CI07-223. Same as County Court July 6, 2007

3. Nebraska Court of Appeals Case Number A-07-0857. Same as County Court

4. Nebraska Supreme Court Case Number has not been assigned. July 16, 2008. Refused Petition for further review

5. U.S. Supreme Court petition for Writ of Certiorari is denied

## JURISDICTION

Nebraska Court System, had uncontested Jurisdiction, neither party objected to jurisdiction.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This petition for Writ of Certiorari implicates the Fourteenth Amendment to our United States Constitution, The Patriot Act of 2001, Ricco laws, as well as failure to consider Nebraska Life Safety Statutes, trespass statutes, Terrorism statutes, and contempt of Court Order and refusal to leave Marvin's property, also federal CFR 1910.36 through 1910.36 (f) (2).

The Fourteenth Amendment in relevant part as follows:

> All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Constitution Amend. XIV, sec. 1.

This petition for Writ of Certiorari also quotes excerpts from Nebraska Revised Statutes 81-502, 81-514, 81-538, 81-527, Court Order #23784 which is in Exhibit in file, and regulatory building occupancy permits for Marvin's assembly areas in his building.

NRS28-300 and 28-311;28-520 and 28-521

## STATEMENT OF THE CASE

### A. PROCEEDINGS BELOW

Petitioner was convicted of conversion, while Paragraph 3. reads, "While it is uncontroverted that the condenser unit belonging to the plaintiff was trespassing on the defendant's property, the Court can find no defense for the defendant's actions of converting the plaintiff's property."

The Court makes no comment that the petitioner testified that the condenser was obstructing plaintiff's exit egress and petitioner had the nondelegatable duty to remove the condenser unit. So, petitioner is now petitioning the United States Supreme Court on the enforce federal CFR1910.36 and other remedies under Nebraska Revised statutes 81-501 to 81-538

## B. STATEMENT OF RELEVANT FACTS

The Respondents overtly violated Court Order Remedy #23784 which orders them to stay off Petitioners land and specifically states air-conditioning units, which took from 1977 to 1987 to get the Respondents moving towards compliance of removing their air-conditioning units the day before contempt was held, so they were purged of their contempt.

In April 2004 the Respondents did place a large and heavy thirty six inch cube of an air cooling unit right in the middle of the Forty Eight inch wide designated permanent fire Exit egress pathway from both buildings, as per this photograph, which very clearly obstructs and/or blocks said egress as you can very clearly see in the photos in Exhibits.

As a general rule, both buildings have had he bulk of occupants in the evenings, so how would humans exiting in an emergency squeeze around or over the top of said obstruction in the dark of night and in near stampede? And guess who is the first person to be liable for allowing such and impediment to remain obstructing this permanent fire exit egress walkway route. Also, isn't this perpetual battle the major reason for Marvin's wife to divorce him and protect her half of the assets from an impending disaster of twenty million dollars and incarceration for negligent homicide as has been the case in Rhode Island night Club fire and obstructed exits. Also, fire officials know of hundreds of similar disasters and the Courts are also aware of these disasters and that is why we have Life Safety Codes, but who enforces them. Well, Lawrence D. Marvin obtained the Court Order #23784, which the Respondents clearly and overtly

gnored. Marvin sent a written request by registed nail to get off or forfeit said item, which the Re-pondents clearly and overtly ignored; Marvin had he Local and State Fire Official intervene and said ntervention was clearly and overtly ignored by the Respondents; Also, the 48 hours waiting period was ong past. So the 5 hours needed was given.

Marvin knows that two wrongs do not make right, however, under duress of complying with his lawful obligations of his 1977 and 1998 Life and Safety updates for building occupancey levels, Marvin is required by laws, rules and regulations to not allow aisles, exits, and fire exit egress permanent walkway routes to become or remain obstructed. So, with the history of the Respondents Fiat Lease which they drug out from 1977 to 1987, when the 48 hours given to get off had long past, and the installation only took five hours, then the installer could have removed the unit without damage in less than five hours. So, this entire charade, sting, terrorist act, Hate Crime, or whatever should not have gone unpunished by Court Order #23784, the local and State Fire Officials, and by the Respondents themselves, so Marvin was compelled under duress or coercion to remove said obstruction. The Respondents did open their barroom exit door and look out to see if Marvin got electrocuted when they heard the loud minor explosion of the high powered electrically charged line was snipped. The Respondents refused to claim the unit within 24 hours when contacted by Marvin's attorney, but the Respondents were clearly intent on causing Marvin to finance their overt and wrongful trespass which clearly makes them a joint Tortfeasor

so they should only get 50% or less; preferably nothing, but since we need new case law they should only get one dollar as Nominal damages so this case stays on the books, and the Court can supervise it like the Court had to supervise school integration and school busing. This is what the Petitioner requests.

## REASONS FOR GRANTING THE PETITION FOR REVIEW

The Court System acknowledges that the photos and testimony clearly shows the area to be narrow and junky. But they clearly ERROR in being oblivious that the thirty six inch condenser is obstructing the forty eight inch wide exit egress walkway in violation of NRS 81-514 or federal CFR 1910.36 as per this photograph.

The Court admits the TRESPASS but ERRORS in not assessing first or second degree trespass on posted property on which Court Order #23784 was a Remedy to keep the Respondents off, and the Respondents refusal to leave on receiving written notice from Marvin and verbal notice from Fire Officials.

The Court does not admit that fiat leases without acceptance and consideration are invalid, illegal or void and the Respondents had no right to place the condenser on Marvin's real estate and leave it as abandoned junk like the second unit in the Exhibit. The Court System has errored in not comprehending that the Respondents were the major joint-tortfeasor who initiated their overt act of trespass and refused to leave. They created the threats to Life and Safety and up to now have done so with impunity. Where is the shared costs and liability?

## CONCLUSION

Does this petitioner have the God given Right and Constitutional right to say where his charity dollars go?

If two wrongs do not make a right, then why is overt wrongful acts of violating Court Order #23784, violating posted property, refusal to leave when receiving written Notice of abandonment and forfeiture; visits from the Fire Officials; after consulting with their own attorney who represented the pro se contempt action in 1987 and Marvin's request for easement in 1998, and still on the job in 2004, overt encroachments, namely three or more encroachments.

We do have laws to protect Life and Safety of all our people, including 9-11-01 Terrorism Act; Patriot Act; Hate Crimes; RICCO; and other laws, rules and regulations.

I want the damages reduced and see that I get a refund of damages and interest. I also certainly feel that I am intitled to rents and legal fees for the repeated overt wrongful acts of the Respondents which were initiated by the Respondents, which clearly shows they are a joint-tortfeasor and equally, or more so, responsible for the damages and waste,, because, if they had not trespassed and refused to leave, then Petitioner would not have had to use self help.

Dated February 6, 2009
Respectfully submited
(Mr.) Lawrence D. Marvin
IOOF Building Suite 2D
635 North Main Street
Fremont, Nebraska 68025
(402) 372-8978
American Citizen pro se

# APPENDICES

A) County Court of Dodge County
Case No CI05-1045

Nebraska Fraternal order of Eagles,
Aerie #200 - Plaintiff

vs

Lawrence D. Marvin - Defendant

March 9, 2007

This bench trial on the plaintiff's first and second causes of action and the defendant's counterclaim came before the Court on December 11, 2006. Appearing in court were S. Nicholas Boggy as counsel for the plaintiff and Daniel Bracht as counsel for and with the defendant, Lawrence Marvin. The Court heard sworn testimony from Samuel Denoyer, Ardon Toelle, Bob Niles and Lawrence Marvin. The Court received Exhibits 1 through 23 into evidence. The Court heard argument from counsel and took this matter under advisement with leave to file briefs in this matter. The Court subsequently received a brief from Mr. Boggy and Mr. Bracht.

The Court, from the evidence presented and being duly advised in the premises, hereby finds and orders as follows:

PLAINTIFF'S FIRST CAUSE OF ACTION

1. The tort of conversion is any distinct act of dominion wrongfully exerted over another's personal

property in denial of or inconsistent with the rights of the owner or secured party. *Otto Farms v. First National Bank of York*, 228 Neb. 287, 422 N.W. 2d 331 (1988); *Jessen v. Blackard*, 159 Neb. 103, 65 N.W. 2d 345 (1954).

2. The plaintiff has met its burden of proof for the tort of conversion based on the defendant's letter (Exhibit No. 4) and the defendant's testimony on direct examination by Mr. Boggy in which he stated he knew it was the plaintiff's property, he took pruning shears and cut the electrical and freon lines, he did not advise the plaintiff that he had the unit, that he considered the property forfeited, and that he owned it.

3. While it is uncontroverted that the condenser unit belonging to the plaintiff was trespassing on the defendant's property, the Court can find no defense for the defendant's actions of converting the plaintiff's property. The measure of damages regarding the conversion of the condenser unit, is the market value of the converted property at the time and place of conversion. *Otto Farms*, 228 Neb. at 293, 422 N.W. 2d at 336. See also NJI 2d 4.27 (Damages - Conversion of Property). The testimony of Arden Toelle and Exhibits 12 and 13 establish the market value of the converted property at the time of conversion.

4. The plaintiff has pled special damages for the spoilage of food and beverage resulting from the defendant's conversion of the condenser unit. According to Nebraska Jury Instructions, special damages may be pled and evidenced in a conversion action. NJI 2d 4.27-1. The plaintiff established special damages by the testimony of Bob Niles and Exhibit 16.

The Court further finds that the spoilage of inventory is the proximate cause of the defendant's conversion for the condenser unit and that special damages should be awarded. The Court is not allowing the payment of plaintiff's officials for amounts that have not been expended by the plaintiff. therefore, the labor damages stated in Exhibit 17 will not be allowed.

PLAINTIFF'S SECOND CASE OF ACTION

5. The plaintiff's second cause of action for damages to the plaintiff's concrete wall is denied for lack of proof of damages. The Court will not address the issue of statute of limitations defense due to the lack of proof of damages. For this reason, the plaintiff's second cause of action for damages is denied. The Court further finds that the county court lacks subject matter jurisdiction to enter any form of injunctive relief as to the conduct of the parties in this matter.

DEFENDANT'S COUNTERCLAIM

6. The defendant's counterclaim is denied for lack of proof of damages.

JUDGMENT

7. The Court awards damages for conversion in favor of the plaintiff and against the defendant in amount of $4,005.28, and special damages in favor of the plaintiff and against the defendant in the amount of $1,089.00 for a total judgment of $5,094.28, plus costs of this action in the amount of $42.00.

BY THE COURT:

B) County Court of Dodge County Nebraska
Case No CI 107-223

Nebraska Fraternal Order of Eagles,
Aerie #200 - Plaintiff

vs

Lawrence D. Marvin - Defendant

July 6, 2007

The matter of the appeal from the decision of the County Court came on for hearing on July 3, 2007. The Appellant/Defendant was present in person and represented by his attorney, Daniel P. Bracht. The attorney for the Appellee/Plaintiff S. Nicholas Boggy was present in person. Evidence was received. Arguments made.

Judgment of the County Court was filed on March 9, 2007 and the Appellant/Defendant timely filed a Notice of Appeal on April 6, 2007. The Bill of Exceptions was filed on May 9, 2007. The Statement of Errors was filed approximately 41 days later, on June 29, 2007.

In appeals from the County Court, the District Court shall review the case for error appearing on the record made in the County Court. Consideration of the cause will be limited to errors properly assigned and discussed.

When reviewing a judgment for errors appearing on the record, the inquiry is whether the decision conforms to the law, is supported by competent evidence and is neither arbitrary, unreasonable nor

capricious.

Upon reviewing the record on appeal from the Dodge County Court, and after presentation of the arguments, the COURT FINDS AND ORDERS THAT:

1. The County Court did not err in regard to the law and that there was competent evidence to support the finding that the Plaintiff had met its burden of proof for the tort of conversion. Additionally, assuming without deciding that the County Court erred in the receipt of Exhibit 16, such err would be harmless as other testimony setting forth the amount of damages had previously been received without objection. Therefore, the Court finds that the award of special damages was established by competent evidence and , therefore, was not err. Lastly, the Court finds that the County Court did not err in entering judgment in favor of the Plaintiff and against the Defendant and in denying the Defendant's Counterclaim.

IT IS THEREFORE ORDERED that the Judgment of the Dodge County Court be and hereby is affirmed.

IT IS FURTHER ORDERED that this matter be, and hereby is, remanded to the Dodge County Court for execution of the Judgment in accordance with this Order.

IT IS FURTHER ORDERED that the Clerk of the District Court certify a copy of this order to the Dodge County Court, along with costs incurred in this court.

Dated this 6th day of July, 2007.

BY THE COURT

C) IN THE NEBRASKA COURT OF APPEALS
Case N. A-07-857

Fraternal Order of Eagles Aerie #200, Appellee

vs

Lawrence D. Marvin, Appellant.

May 27, 2008

SIEVERS, MOORE, and CASSEL, Judges.

SIEVERS, Judge.

Pursuant to authority granted to this court under Neb. Ct. R. of Prac. 11B(1) (rev. 2006), this case was ordered submitted without oral argument.

FACTUAL BACKGROUND

The Fraternal Order of Eagles Aerie #200 (Eagles) owns property at 649 North Main Street in Fremont, Nebraska, where the business and social activities of the lodge are conducted. Immediately to the south is property owned by Lawrence D. Marvin. The property line between the Eagles' real estate and Marvin's real estate lies approximately 12 inches south of the Eagles' building and the Eagles have an easement of approximately 36 inches on the north edge of Marvin's real estate. The easement is limited in purpose to that of a fire escape and exit plus an entrance to the building located on the Eagles' real estate. From the photos and testimony the area in question could be described as a rather junky and

and narrow alleyway or walkway.

As a result of a lawsuit filed in the circuit court for Dodge County, a judgment was entered on February 27, 1980, in which the court found that the Eagles had encroached upon Marvin's property "by erecting two air conditioning units without [Marvin's] permission." After finding that Marvin had no adequate remedy of law, the Eagles were enjoined from encroaching upon Marvin's property "as set forth above and [Eagles] is ordered to remove the two air conditioning units within 90 days from [the] date hereof.' In approximately 1987, there was additional litigation between these parties to enforce the above-described injunction by a contempt proceeding. That matter did not proceed to judgment, as the Eagles removed the offending unit from the area of easement.

In early April 2004, it was determined that the Eagles' walk-in cooler, where various food and beverage items were stored, was going bad. The air conditioner/condenser, then located on the roof of the Eagles building, was checked and it was determined that a new unit was necessary with a degree of urgency. Evidence adduced by the Eagles was that because of the need to get the new unit operational quickly, it was placed temporarily on cement blocks between Marvin's building and the Eagles' building--on the easement area--rather than up on the roof where the old unit was located. The Eagles' evidence was that no one in a position of authority a the time of these occurrences was aware of the past litigation and court orders involving the easement between the two buildings.

On April 16, 2004, the Eagles received a letter

from Marvin which is in evidence as exhibit 4. Summarized, the letter asserted that the new air conditioner/condenser was trespassing on Marvin's land and that he had asked the Fremont Fire Chief and the Deputy Nebraska Fire Marshall to have the Eagles remove the air conditioner/condenser within 48 hours. Marvin's letter asserted that he would "enforce my right, at my convenience and in my way..." after 48 hours from when the Eagles received his letter if the unit was not removed. Marvin's letter closed with the assertion: "I consider said air conditioning unit donated and forfeited to me."

After receiving Marvin's letter, Robert Niles, the secretary of the Eagles, made arrangements for a survey with the intent that if the unit was not in a proper place or was in violation of earlier court proceedings, it would be moved.

However, on April 26, Niles learned that the air conditioner/condenser was gone so he called police, as well as Arden Toelle of Toelle Refrigeration. Toelle testified that when he arrived he found that the electrical lines to the air conditioner/condenser had been cut, although power was still in the line; the refrigeration lines were gone; and the entire unit was gone. Toelle located a replacement unit in South Dakota and installed it on April 28, 2004. Niles testified that the removal of the air conditioner/condenser caused the Eagles to loose beverage and food products in the cooler having a value of $1,089.72, and they had the cost of getting and installing a new unit.

## PROCEDURAL BACKGROUND

The Eagles sued Marvin on July 7, 2005. In

legal elements necessary to prove a conversion. Marvin admittedly removed the air conditioner/condenser and admittedly still had it in his possession at the time of the trial. It is true that the evidence shows a technical trespass by placement of the air conditioner/condenser within the area of the easement and outside of the purposes of the easement.

Conversion has been defined as "...any distinct act of dominion wrongfully exerted over another's personal property in denial of or inconsistent with his rights therein." Allen v. Dealer Assistance, Inc., 207 Neb. 455, 460,299 N.W.2d 744,747 (1980). In Polley v. Shoemaker, 201 Neb. 91,266 N.W.2d 222 (1978), the Supreme Court pointed out that the tort of conversion is confined to those "major interferences with the chattel, or with the plaintiff's rights in it, which are so serious, and so important as to justify the forced judicial sale to the defendant." 201 Neb. at 95, 266 N.W.2d at 225.

We do not believe that it can seriously be contended that the cutting of the power and refrigerant lines to the air conditioner/condenser along with hauling it away and secreting it from the Eagles does not satisfy the requirement of a serious or major interference with the chattel owned by the Eagles. Marvin's defense, as we understand it, is that because a trespass was occurring and he is under a duty to mitigate damages, cutting the unit loose from its connections and hauling it away was merely mitigation of damages. Marvin advances the argument despite the absence of any evidence of definable damages flowing from the placement of the unit over the boundary line for this brief period of time. Obviously, Marvin engaged in self-help but such went beyond

simply getting the unit off of his easement. Rather, Marvin damaged the unit by cutting the power and refrigerant lines, took possession of it, and secreted it from the Eagles.

The facts of this case indisputably prove a conversion. While it is relatively easy to imagine circumstances in which self-help would be justified and lawful in the face of a trespass in order to mitigate damages, the trespass by the Eagles was hardly of the kind that Marivn would be justified in bypassing the lawful remedies and resorting to self-help--particular of the kind engaged in here.

Marvin complains of the trial court's admission of exhibit 16, a handwritten listing of food items that the Eagles claimed were spoiled by removal of the air conditioner/condenser. The supporting testimony for exhibit 16 was from Robert Niles, secretary of the Eagles club, who testified that one of his job duties was to pay bills, including for food and beverages. Niles testified that he, along with Mark and Rose Grude, the cooks, sat down and examined invoices and bills as well as the weights of the damaged meat and prepared the list. However, Niles admitted that the writing was Rose Grude's and therefore he did not prepare the document. However, Niles further testified that he was present and personally examined the invoices for the price per pound as well as the poundage of the spoiled meat which Rose Grude wrote down to formulate exhibit 16, totaling $1,089.72 for lost food and beverage. The district court found that even if exhibit 16 was improperly admitted over the hearsay and foundation objection of Marvin, there was testimony proving the

amounts contained thereon and therefore the judgment for damaged food and beverage was not erroneous. After reviewing the evidence, the district court did not err in so concluding.

## CONCLUSION

Marvin's assignments of error are without merit and the affirmance of the county court's judgment by the district court is hereby affirmed.

AFFIRMED.

D) NEBRASKA SUPREME COURT
AND NEBRASKA COURT OF APPEALS
OFFICE OF THE CLERK
P.O. BOX 98910
2413 STATE CAPITOL BUILDING
LINCOLN, NE 68509
(402) 471-3731

July 16, 2008

Daniel P. Bracht
BRACHT LAW FIRM
127 E. Walnut Street*
P.O. Box 252
West Point, NE 68788

**IN CASE OF:** A-07-000857, Fraternal Order of Eagles Aerie #200 v. Marvin

**The following internal procedural submission or filing by a party:**

Pet Appellant for Further Review & Brf submitted or filed 06/23/08 **has been reviewed by the court and the following order entered:**
Petition for further review overruled

Respectfully,

CLERK OF THE SUPREME COURT
AND COURT OF APPEALS

## IMPORTANT NOTICE

Due to the reduced number of cases awaiting submission to the Supreme Court and Court of Appeals, and as part of the courts' continuing efforts to reduce case-processing time, **future requests for brief date extensions will be closely scrutinized.** See Neb. Ct. R. of Prac. 6F and 9A. Pursuant to Neb. Ct. R. of Prac. 10A, if an appellant's default for failure to file briefs is issued, appellant "is required to file a brief within 10 days after receipt of such notice. Appellant's failure to file a brief in response to the notice of default subjects the appeal to dismissal."

**PLEASE BE ADVISED THAT THESE RULES WILL BE STRICTLY ENFORCED.**

E) IN THE DISTRICT COURT OF
DODGE COUNTY, NEBRASKA

CASE NO. CI07-223

FRATERNAL ORDER OF EAGLES, Aerie#200,
Plaintiff,

vs.

LAWRENCE D. MARVIN,
Defendant.

AUGUST 20, 2008

Now on this 20th day of August, 2008, this matter came before the Honorable John E. Samson, District Judge, on the mandate of the Nebraska Court of Appeals filed herein on the 19th day of August, 2008.

The Court being fully advised in the premis is FINDS, ORDERS, ADJUDGES, AND DECREES:

1. That the Mandate of the Nebraska Court of Appeals affirming the appeal of the judgment of this Court shall be spread upon the Judgment records of this Court as required by law; and

2. That the costs of appeal to the foregoing court are hereby ordered to be paid by Appellant and are taxed at $122.00.

BY THE COURT:

F) IN THE COUNTY COURT OF DODGE COUNTY, NEBRASKA

FRATERNAL ORDER OF EAGLES, Aerie #200,
Plaintiff,

vs.

LAWRENCE D. MARVIN,
Defendant.

AUGUST 25, 2008

THIS MATTER came on for hearing on the 28th day of July, 2008, on the Motion of the Plaintiff for an order directing that payment of the supersedeas bond in the amount of $5,500.00 deposited with this Court by the Defendant be paid to the Plaintiff. The Plaintiff appeared by its attorney, S. Nicholas Boggy. The Defendant, Lawrence D. Marvin, appeared personally and pro se. Evidence was adduced and the Court being advised in the premises finds as follows:

1. On the 16th day of July, 2008, the Nebraska Supreme Court overruled the Defendant's petition for further review.

2. Subsequent to the Supreme Court's ruling, the Defendant filed a "Desire of Stay of the Mandate or Motion Recalling the Mandate" with the Nebraska Supreme Court.

3. On the 15th day of August, 2008, the Nebraska Court of Appeals issued a mandate for this Court to enter judgment in conformity with the judgment and opinion of this Court, which mandate was filed with the District Court of Dodge County on

August 19, 2008, and with this Court on August 20, 2008.

4. Through July 28, 2008, the total amount of the judgment, including interest, plus costs, was $5,698.08.

IT IS THEREFORE ORDERED that the Clerk of the County Court shall pay the sum of $5,500.00, earlier deposited by the Defendant, Lawrence D. Marvin, to the Plaintiff, Fraternal Order of Eagles, Aerie #200.

BY THE COURT:

G) Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

January 21, 2009

Mr. Lawrence D. Marvin
100F Building
Suite 201
635 North Main Street
Fremont, NE 68025

R: Lawrence D. Marvin
V. Fraternal Order of Eagles Aerie #200
No. 08-657

Dear Mr. Marvin:

The Court Today entered the following order in the above-entitled case: The petition for a writ of certiorari is denied.

Sincerely,
William K Suter, Clerk